

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 1494 – HB 2403

March 6, 2016

SUMMARY OF ORIGINAL BILL: Requires the owner of the property, for purposes of asset forfeiture under Title 40, Chapter 33 of the Tennessee Code Annotated, to have been convicted of a criminal offense related to the seized property and a finding by clear and convincing evidence that the property was used or possessed illegally, unless the property was a controlled substance; provided that the conviction and finding requirements do not apply if the owner of the property is deported, is unknown even after the seizing agency has exercised due diligence in determining the owner, or flees after prosecution is commenced.

Requires any person asserting a security interest in the seized property to file proof, rather than a claim or proof, of the security interest with the applicable agency within 30 days or the seized property will be forfeited. Requires a hearing to be set within 30 days of a claim being filed. If a claim is not filed and the owner of the property is known, then the agency is required to establish a hearing date within 30 days from the date the agency becomes aware the owner has (1) been convicted of an offense related to the seizure, (2) been deported, or (3) fled after the commencement of prosecution. Further, if no claim is filed and the owner of the property is not known after the agency has exercised due diligence in attempting to determine the owner, then the property shall be forfeited.

Requires the seizing agency to prove by clear and convincing evidence, rather than preponderance of the evidence, that the seized property was used in a manner making it subject to forfeiture. The seizing agency must (1) carry its burden of proof that the property was used in a manner making it subject to forfeiture, (2) recommend forfeiture of the property, and (3) prove by clear and convincing evidence that the owner has been convicted of a criminal offense or that the owner has been deported or fled after commencement of prosecution.

When a forfeiture proceeding is appealed, the reviewing court must apply the clear and convincing evidence standard in determining whether to sustain or reverse the final order of the applicable agency. In a forfeiture proceeding, a court shall allow a claim filed for any conveyance if the claimant proves by a preponderance of the evidence that the claimant has an interest in the conveyance, and the state failed to prove by clear and convincing evidence that the claimant had knowledge or reason to believe the conveyance was used in the commission of an offense.

FISCAL IMPACT OF ORIGINAL BILL:

Decrease State Revenue – \$262,200/Recurring

Increase State Expenditures – \$116,300/One-Time

SB 1494 – HB 2403

SUMMARY OF AMENDMENT (012929): Deletes all language after the enacting clause.

Requires the Department of Safety (DOS) to report to the General Assembly by March 1 of each year a detailed report on the total number of seizure cases opened by the DOS; the number of seizure cases where an arrest was made; the total number of cases resulting in forfeiture; the types of property seized under Title 40, Chapter 33, Part 2 and the totals for each type; the amount of currency seized; and the amount of currency forfeited.

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

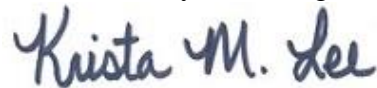
NOT SIGNIFICANT

Assumptions for the bill as amended:

- The DOS currently prosecutes its own forfeitures. It is assumed that compiling this information into an annual report will not significantly impact their operations.
- The DOS confirms that the bill as amended will not significantly impact their operations and that the report can be produced within their existing resources.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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